IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 27-04-2007

CORAM

THE HONOURABLE MR.JUSTICE S.TAMILVANAN

CRIMINAL APPEAL No.130 of 2001

S.Rangarajan ... Appellant /Accused

-vs-

State rep by
Deputy Superintendent of Police
Vigilance and Anti-Corruption
Salem. ... Respondent/Complainant

Criminal Appeal filed under Section 374 of Cr. P.C read with Section 27 against the Judgment and conviction, dated 29.01.2001 passed in Special C.C.No.1 of 1995 on the file of the Special Judge & Chief Judicial Magistrate, Coimbatore.

For appellant : Mr.V.Gopinath, Senior Counsel
for Mr.D.Shivakumaran

For respondent : Mr.Hasan Mohamed Jinnah
Govt. Advocate (crl. side)

J U D G M E N T

This Criminal Appeal has been preferred under Section 374 Cr.P.C r/w Section 27 of Prevention of Corruption Act, by the appellant / accused against the judgment of conviction, dated 29.01.2001 made in Spl.C.C.No.1 of 1995 on the file of the Special Judge & Chief Judicial Magistrate, Coimbatore.

WEB COPY

2. The brief facts of the prosecution case are as follows :

The appellant/ accused, while he was functioning as Junior Engineer in Tamil Nadu Electricity Board, Palladam Division, Mahdappur branch on 07.03.1994 at about 10.30 a.m, had demanded a sum of Rs.3,500/- as illegal gratification from P.W.2, Velusamy for giving agricultural electricity connection to the borewell situated in SF.No.855/4 Kallakinarpudur, belonged to his father and further, he instructed P.W.2

https://hcservices.ecourts.gov.in/hcservices/

to bring Rs.1,000/- on 17.03.1994 at 11 a.m, and the balance amount to be paid at the time of giving electricity service connection. On 17.03.1994, at about 11 a.m, when P.W.2 went to the office of the appellant / accused, he reiterated his demand for Rs.1,000/- and accordingly, received the amount from P.W.2, and thereby committed offence, under Sections 7 and 13 (1) (d) of Prevention of Corruption Act, punishable under Section 13 (2) of the Prevention of Corruption Act.

3. In support of the prosecution case, P.Ws. 1 to 10 were examined, Exs.P.1 to P.24, Exs.X.1 to X4 and M.Os.1 to 10 were marked. The trial court, after considering the evidence and the arguments advanced by both sides, has found the appellant / accused guilty of the offence under Sections 7 and 13 (1) (d) r/w 13 (2) of Prevention of Corruption Act and accordingly, sentenced him to undergo RI for two years and to pay a fine of Rs.5,000/- with default sentence for each of the offence. The total fine amount imposed on the appellant / accused was Rs.10,000/- and it was also ordered to run the sentence concurrently.

4. Mr.V.Gopinath, learned Senior Counsel, appearing for the appellant / accused contended that there was no proof for demand of illegal gratification by the appellant on 07.03.1994. According to him, the father-in-law of the complainant was a police constable in CBCID, on his behest, the complaint was given against the appellant. The learned senior counsel further contended that P.W.3, a Government servant was punished on the charges of corruption, but according to him, the evidence of P.W.2 and P.W.3 cannot be relied upon, since he had been motive to implicate the appellant / accused.

5. It is not in dispute that in a case under Sections 7 and 13 (1) (d) r/w 13 (2) of Prevention of Corruption Act, the prosecution should establish the demand of illegal gratification made by the appellant / accused, the receipt of the money so paid as illegal gratification and recovery of the same from the accused in the presence of witnesses. It is not in dispute that the appellant / accused was employed as Junior Engineer in the Tamil Nadu Electricity Board, Madhappur branch, Palladam Division on the relevant dates, specified in the complaint, Ex.P.4. As per the evidence of P.W.2, Velusamy, for getting electricity service connection to the borewell installed in the well of the agricultural land, belongs to Kumarasamy Gounder, his father, P.W.2 approached the appellant on 07.03.1994 at 10 a.m, in his office, for which, the appellant / accused demanded Rs.3,500/- as bribe. Out of which, he instructed P.W.2 to bring a sum of Rs.1,000/- on 17.03.1994 at 11 a.m. P.W.2 has stated the same in his complaint as well as in his evidence and that he gave a complaint on 16.03.1994 at 6.30 p.m, before the respondent herein. In the complaint, Ex.P.4, also he has stated about the demand of illegal gratification made by the appellant / accused on the aforesaid date. As per the evidence of P.W.2, on 17.03.1994, he went to the respondent.s office and after the trap was arranged, he accompanied the officials and other witnesses in a van and got down nearby Madhappur bus stand at about 10.20 a.m, he and the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

witness Arunagiri, P.W.3, proceeded to the aforesaid office of the Electricity Board at about 10.30 a.m. According to him, as instructed, he introduced P.W.3 as his relative to the appellant / accused and while asked about providing service connection, the appellant / accused asked whether he had got the money as demanded by him, immediately, he gave phenolphthalein powder dipped 10 numbers of 100 rupee notes, as instructed by the Deputy Superintendent of Police, Vigilance and Anti-Corruption. The appellant / accused opened the drawer of the table on his right hand side and asked P.W.2 to put the money therein and accordingly, P.W.2 put the money, then P.W.2 got the assurance from the appellant / accused, for getting the electricity service connection and came out from the office along with P.W.3.

6. According to P.W.2, even before himself and P.W.3 leaving the place, the appellant / accused opened the drawer in their presence and counted the currency notes by using both of his hands in the table drawer itself. P.W.3, the Deputy Tahsildar, who had accompanied P.W.2 has also deposed similar evidence, as that of P.W.2, the trial court has also relied on the evidence. On a perusal of the evidence, I am of the considered view that the prosecution has established the demand of illegal gratification by the appellant / accused on 07.03.1994 and subsequently on 17.03.1994.

7. It is not in dispute that one Subramaniam, father-in-law of P.W.2 was a constable, working in CBCID, Erode, as stated by the appellant / accused, but that alone would not be sufficient to hold that at the behest of the father-in-law of P.W.2, the complaint was given by P.W.2. As per the evidence of P.W.1, Superintending Engineer, Coimbatore, South Zone, had gone through the FIR, the statement of witnesses, mahazar and other documents and having satisfied, he accorded sanction under Section 19 (1) (c) to prosecute the appellant / accused under Sections 7 and 13 (1) (d) r/w 13 (2) of Prevention of Corruption Act.

8. Learned counsel for the appellant would contend that as per the evidence of P.W.4, Executive Engineer, Tamil Nadu Electricity Board, Palladam Division, the delay in providing service connection was due to the non-availability of electrical goods, but that alone is not sufficient to create any reasonable doubt in establishing the guilt against the appellant / accused.

9. Mr.V.Gopinath, learned Senior Counsel, in support of his contention, cited the following decisions :

1. Suraj Mal vs. State (Delhi Administration), (1979) 4 SCC 725
2. M.K.Harshan vs. State of Kerala, (1996) 11 SCC 720
3. Ramakrishnan vs. State, 2006-2-L.W. (Crl) 965
4. Punjabrao vs. State of Maharashtra, 2004 SCC (Cri) 1130
5. Meena vs. State of Maharashtra, (2000) 5 SCC 21
6. Panalal Damodar Rathi vs. State of Maharashtra, (1979) 4 SCC 526

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

7. Mahmoodkhan Mahboobkhan Pathan vs. State of Maharashtra, 1998 Crl.L.J. 3635

10. Per Contra, Mr.Hasan Mohamed Jinnah, learned Government Advocate (Crl.side) cited the following decisions :

1. State of U.P. vs. Zakaullah, AIR 1998 SCC 1474
2. A.Abdul Kaffar vs. State of Kerala, 2004 SCC (Cri) 981
3. Dhandapani vs. State, 2002 Cri. L.J. NOC 104 (Madras)
4.M.A.Thonge vs. State of Maharashtra, 1993 Crl.L.J. 3796
5.Jwala Prasad vs. State of U.P, 1997 Crl.L.J. 1103
6. M.W.Mohiuddin vs. State of Maharashtra, 1995 SCC (Cri) 546
7. M.O.Shamsudhin vs. State of Kerala, 1995 SCC (Cri) 509

11. Learned Senior counsel for the appellant would contend that mere proof of receipt of the money by an accused, in the absence of proof of demand and acceptance of money as illegal gratification would not be sufficient to establish the guilt of the accused in a corruption case. No doubt, the first and foremost ingredient to constitute the offence under Prevention of Corruption Act is to prove the receipt of money as illegal gratification, but in addition to that, the prosecution should establish the demand that had been made by the accused. In support of his contention, he relied on the decision, Ramakrishnan vs. State, reported in 2006-2-L.W. (Crl) 965.

12. In the decision, T.Subramanian vs. State of Tamil Nadu, reported in (2006) 1 SCC (Cri) 401, the Hon'ble Supreme Court has held that .Mere proof of receipt of money by the accused, in absence of proof of demand and acceptance of money as illegal gratification, not sufficient to establish guilt of accused, if accused offers reasonable and probable explanation, based on evidence when the money was accepted by him, other than as an illegal gratification, accused would be entitled to acquittal.. Here in this case, the appellant / accused has not raised any defence that the amount was received for some other purpose. When the receipt of the amount has been established by oral and documentary evidence, the appellant / accused cannot merely raise a defence that mere proof of receipt of money would not be a proof for acceptance of money as illegal gratification.

13. Mr.Hasan Mohamed Jinnah, learned Government Advocate (Crl.side) relying on the decision, State of U.P. vs. Zakaullah, reported in AIR 1998 SCC 1474, contended that in a case involving police raid or search, acquaintance of independent witness with police or the fact that he helped police action, would not by itself discredit the evidence of said independent witness.

14. In the decision Dhandapani vs. State, reported in 2002 Crl.L.J NOC 104 (Madras), this Court has held that if no explanation was made by the accused for the receipt of money by him, at the time of the trap, and the explanation belatedly given by the accused to the court in the form of suggestions and statement, under Section 313 Cr.P.C and also through

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

evidence of defence witness would be improbable and inconsistent.

15. The Hon'ble Supreme Court of India has held in the decision, Punjabrao vs. State of Maharashtra, reported in 2004 SCC (Cri) 1130, where the accused offers an explanation for the receipt of amount from the prosecution witness and the question that arises for consideration in that case, was whether that explanation would be a sufficient defence and for which, the Hon'ble Apex Court has held that the accused can establish his defence by preponderance of probability. If the explanation offered by him under Section 313 Cr.P.C, is found to be reasonable, then it cannot be thrown away, merely on the ground that he did not offer the said explanation at the time when the amount was seized from him.

16. In the instant case, it is seen that the appellant / accused has not raised any defence with regard to the receipt of ten numbers of 100 Rupee currency notes from him and for the positive result of the phenolphthalein test. According to him, P.W.2, Velusamy, came to his office on the specified date, in connection with getting electricity service connection and he handed over only white paper and informed him that he would come later. But the explanation offered by the appellant / accused is inconsistent and I am of the view that the said explanation would not be sufficient to draw preponderance of probability in his favour.

17. In the decision M.W.Mohiuddin vs. State of Maharashtra, reported in 1995 SCC (Cri) 546, the Hon'ble Apex Court has held that once the accused come into possession of the tainted money, the only inference is that he accepted the same and thus obtained the pecuniary advantage. Hence, if acceptance of money by the accused is established, apart from the earlier demand of illegal gratification made by him, only the accused has to establish his defence contrary to the normal inference that he had not received the money as illegal gratification, but for some other purpose.

18. In the light of the catana of decisions cited by both sides, I am of the considered view that there is no error or infirmity in the finding of the trial court, since the alleged demand of illegal gratification made by the accused, subsequent receipt of the amount and recovery of the same from the accused in the presence of witnesses, have been established by the prosecution beyond reasonable doubt. However, to meet the ends of justice, I find it reasonable to modify the sentence into one year RI and to pay a fine of Rs.5,000/- for each of the offence under Sections 7 and 13 (1) (d) r/w 13 (2) of Prevention of Corruption Act and ordered the sentence to run concurrently.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

19. In the result, the appeal is partly allowed, thereby the conviction is confirmed. Considering the facts and circumstances, the sentence is modified. Accordingly, the appellant / accused is imposed sentence of one year RI and to pay a fine of Rs.5,000/- instead of 2 years RI for each of the offence.

tsvn

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. THE SPECIAL JUDGE & CHIEF JUDICIAL MAGISTRATE
   COIMBATORE.

2. THE DEPUTY SUPERINTENDENT OF POLICE
   VIGILANCE AND ANTI-CORRUPTION
   SALEM.

3. THE PUBLIC PROSECUTOR
   HIGH COURT OF MADRAS, CHENNAI.

4. THE COLLECTOR
COIMBATORE DISTRICT.

5. THE CHAIRMAN, TAMIL NADU ELECTRICITY BOARD,
 CHENNAI.

6. THE SUPERINTENDENT OF POLICE
   DIRECTORAATE OF VIGILANCE AND ANTI CORRUPTION,
  COIMBATORE.

+ ONE CC TO MR D. SHIVAKUMARAN, ADVOCATE SR 29492

AVA (CO)
sg 7/6/07

Crl.A.No.130 of 2001
27-04-2007

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/